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Letter dated 8 November 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to write to you regarding the financing of the Special Court for Sierra Leone and the Residual Special Court for Sierra Leone.

The Management Committee of the Special Court for Sierra Leone has informed me that the Court will run out of funding in December and that it will not be possible to secure the necessary voluntary contributions to enable it to complete its work. In addition, the Committee has suggested exploring alternate means of financing the Residual Special Court for Sierra Leone.

The Special Court for Sierra Leone was established at the request of the Security Council by an agreement between the United Nations and the Government of Sierra Leone. Its mandate is to prosecute persons who bear the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone.

Although financing through assessed contributions is a more viable and sustainable financial mechanism, the Security Council decided that the Special Court for Sierra Leone should be funded from voluntary contributions. Various appeals have been made for funding for the Special Court. Despite these efforts, there will not be sufficient voluntary contributions for the completion of the work of the Special Court.

As you are aware, article 6 of the agreement establishing the Special Court for Sierra Leone provides that, "should voluntary contributions be insufficient for the Special Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court". Pursuant to that provision, I wish to propose to members of the Security Council that one way of addressing the shortfall would be for all of the costs of the Special Court to be provided by assessment, while preserving the independent nature of the Special Court. I recall that previous shortfalls in funding for the Special Court were addressed similarly in 2004-2005 and 2010-2011.

I am aware that when the Security Council concurred with my proposal to seek supplementary means of funding for the Special Court for Sierra Leone in 2010, it did so with the expectation that there would not be additional subventions for the Special Court. At that time, the Special Court was scheduled to complete its work in early 2012. However, it is not possible to project the progress of judicial proceedings with absolute certainty. The trial judgment in the final case before the

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Special Court, involving Mr. Charles Taylor, former President of the Republic of Liberia, was delivered only on 26 April 2012, and he was sentenced on 30 May 2012. Owing to the complexity of the case, it is currently projected that the appeal would be completed by the end of 2013.

It is evident from the statements made during the briefing of the Special Court for Sierra Leone to the Security Council on 8 October 2012 that the Special Court has been successful thus far in carrying out its mandate. But its work is not yet complete, and some challenges still remain. The possibility of the Special Court running out of funds and, consequently, being unable to complete the appeal in the case of Mr. Taylor is a very serious concern. A collapse of this appeal due to lack of funding would raise very substantial issues for the international community. As I have said before, the legacy of the Special Court and the progress that has been made towards ensuring accountability and restoring peace and security in Sierra Leone and the region would be at risk.

The shortfall for the period until the closure of the Special Court for Sierra Leone in late 2013 will be in the region of $14 million. The Security Council may wish to invite me to bring the matter to the attention of the General Assembly with a view to seeking the appropriation of funds for the Special Court, while preserving the independence of the Special Court.

In July 2010, I notified the Security Council of my intention to seek to negotiate and conclude with the Government of Sierra Leone an agreement establishing a residual mechanism for the Special Court for Sierra Leone and the statute of the residual mechanism. The members of the Security Council took note of this intention and agreed to my proposed manner of proceeding. I therefore concluded with the Government of Sierra Leone an agreement establishing the Residual Special Court for Sierra Leone, which entered into force on 2 October 2012. The Residual Special Court will commence functioning immediately upon the closure of the Special Court for Sierra Leone. I am grateful that the Security Council recently welcomed the agreement and expressed its intention to support the Residual Special Court.

The Residual Special Court for Sierra Leone will carry out the functions of the Special Court for Sierra Leone that must continue after its closure, including supervising the enforcement of sentences of the persons convicted by the Special Court for Sierra Leone, managing the archives, protecting and supporting witnesses, reviewing judgments and sentences, responding to requests for access to evidence by national prosecuting authorities, conducting contempt of court proceedings and providing defence counsel and legal aid for any proceedings before the Residual Special Court. It will be a very small and efficient entity, with a minimal number of staff. The estimated annual budget for the continuous activities of the Residual Special Court amounts to $2 million. In addition, there may be costs for ad hoc activities that might arise periodically.

When the agreement was concluded, it was thought that it would be possible to secure voluntary contributions for the operations of the Residual Special Court for Sierra Leone. The recent experience of the Special Court for Sierra Leone, however, has led to the conclusion that, particularly given the long-term nature of residual mechanisms, it would not be prudent to leave the funding of the Residual Special Court to the uncertainties of voluntary contributions. Nor would it be practical to engage in continuous appeals for funding for this purpose. I recall that the Security

Council recently encouraged me to find practicable solutions to address the needs of the Residual Special Court in the most efficient and effective manner. In this connection, article 3 of the agreement provides that alternate means of financing the Residual Special Court may be sought. Pursuant to that article, it is necessary to find a viable and sustainable financial mechanism to ensure secure and continuous funding for the Residual Special Court. Accordingly, I intend to submit a proposal to the General Assembly for alternate means of financing the Residual Special Court.

I should be grateful if you would bring the present letter to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon